

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE LITHIUM ION BATTERIES ANTITRUST LITIGATION

Case No. 4:13-md-02420-YGR

This Document Relates to:

All Indirect Purchaser Actions

**[PROPOSED] ORDER GRANTING
INDIRECT PURCHASER PLAINTIFFS'
MOTION TO DIRECT NOTICE
REGARDING SETTLEMENTS WITH
LG CHEM, HITACHI MAXELL, AND
NEC DEFENDANTS**

AS MODIFIED BY THE COURT

1 The Indirect Purchaser Plaintiffs (“IPPs”) filed a Motion to Direct Notice Regarding
2 Settlements with (1) Defendants LG Chem, Ltd. and LG Chem America, Inc. (“LG Chem”); (2)
3 Hitachi Maxell Ltd. and Maxell Corporation of America (“Hitachi Maxell”); (3) and NEC
4 Corporation (“NEC”) (collectively, the “Settling Defendants”). The Court heard the argument of
5 counsel and, having reviewed the pleadings, the settlement agreements, other papers on file in this
6 action, and the statements of counsel and the parties, hereby finds that the motion should be
7 **GRANTED.**

8 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

9 1. The Court does hereby find that it is likely to approve the proposed Settlement
10 Agreements under Rule 23(e)(2). Specifically:

11 a. The Class Representatives and Counsel have vigorously represented the
12 interests of the Settlement Class, having prosecuted this Action on behalf
13 of the Settlement Class for more than six years.

14 b. The Settlement Agreements subject to this Motion arise out of arms'-
15 length, informed, and non-collusive negotiations between counsel for IPPs
16 and each of the Settling Defendants, who convened multiple times over
17 several months to arrive at the settlement terms.

18 c. The relief provided for the Settlement Class is adequate, considering: (i)
19 the costs, risks, and delay of trial and appeal, particularly in light of the
20 complex nature of IPPs’ case; (ii) the effectiveness and straightforwardness
21 of the claims process, which is the same as the Court has previously
22 approved; (iii) the reasonableness of the anticipated request for attorneys’
23 fees; and (iv) the absence of any agreement required to be identified under
24 Rule 23(e)(3).

25 2. The Settlement Agreements treat class members equitably relative to each other.
26 IPPs propose a Distribution Plan that the Court has already finally approved in
27 connection with the Round 3 Settlements. This Distribution Plan will allocate 90
28 percent of the settlement funds to class members from states that permit recovery

1 by indirect purchasers (so-called “repealer states”) and 10 percent of the settlement
2 funds to class members from states that have not done so (so-called “non-repealer
3 states”). The Court has reviewed the adversarial process utilized in connection with
4 the Round 3 Settlements undertaken by the IPPs to arrive at this recommendation, and
5 finds that it was appropriate and provided structural assurances of fairness to the
6 class for this round of settlements. This Court is, therefore, likely to grant
7 final approval of IPPs’ proposed Distribution Plan as fair, reasonable, and adequate.
8 It is appropriate for class members from non-repealer states to receive some
9 recovery through these settlements because, first, these settlements were reached at
10 a time when the IPPs were seeking to certify a nationwide class under choice of
11 law principles, which would have included residents from non-repealer states,
12 second, residents from non-repealer states are still active litigants in this case and
13 their claims have been neither dismissed from nor amended out of the
14 pleadings. Moreover, this Court’s prior analysis of the choice of law rules would
15 have been subject to an appeal had this case gone forward to judgment. *See*
16 *National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9, 19 (2d
17 Cir. 1981); *see also Anderson v. Nextel Retail Stores, LLC*, No. CV 07-4480-SVW
18 FFMX, 2010 WL 8591002, at *9 (C.D. Cal. Apr. 12, 2010).

19 3. The Court hereby finds that, for purposes of judgment on the proposed Settlement
20 Agreements, it is likely to certify the Settlement Class, which is defined as:

21 [A]ll persons and entities who, as residents of the United States
22 and during the period from January 1, 2000 through May 31, 2011,
23 indirectly purchased new for their own use and not for resale one
24 of the following products which contained a lithium-ion cylindrical
25 battery manufactured by one or more defendants or their
26 coconspirators: (i) a portable computer; (ii) a power tool; (iii) a
27 camcorder; or (iv) a replacement battery for any of these products.
28 Excluded from the class are any purchases of Panasonic-branded
computers. Also excluded from the class are any federal, state, or
local governmental entities, any judicial officers presiding over
this action, members of their immediate families and judicial
staffs, and any juror assigned to this action, but included in the
class are all non-federal and non-state governmental entities in
California.

1 a. The Settlement Class is sufficiently numerous, as there are millions of
2 geographically-dispersed class members, making joinder of all members
3 impracticable.

4 b. There are questions of law and fact common to the Settlement Class.

5 c. The claims of the class representatives are typical of the claims of the
6 Settlement Class members.

7 d. The class representatives have, and will continue to, fairly and adequately
8 protect the interests of the Settlement Class, and the class representatives
9 have no interests in conflict with those of the Settlement Class. Moreover,
10 the class representatives have retained counsel experienced in antitrust class
11 action litigation who have, and will continue to, vigorously represent the
12 Settlement Class.

13 e. Common questions of law and fact predominate over any questions
14 affecting only individual members. Predominance is satisfied by the fact
15 that this is a price-fixing case, and given the nationwide Settlement Class.
16 *First*, questions as to the existence of the alleged conspiracy and as to the
17 occurrence of price-fixing are common to all class members and
18 predominate over any conceivable individual issues. Resolution of IPPs'
19 claims depend principally on whether defendants participated in the alleged
20 price-fixing conspiracy, and whether this conspiracy caused an artificial
21 increase in the prices paid for lithium ion batteries. *Second*, certification of
22 certification of a Settlement Class that includes residents from both
23 repealer and non-repealer states does not affect the predominance of
24 common issues. While this Court previously performed a choice of law
25 analysis with respect to the litigation class, it is not obligated to do so for
26 the settlement class. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539,
27 563 (9th Cir. 2019). The Ninth Circuit recently rejected the need to do so in
28 the settlement context, holding that “[t]he prospect of having to apply the

separate laws of dozens of jurisdictions present[s] a significant issue for *trial manageability*,” but need not be considered in the settlement context. *Id.* (emphasis added). *Third*, the distribution of different amounts to subgroups of the Settlement Class (*i.e.*, repealer state residents and nonrepealer state residents) does not affect predominance because it is yet another common question.

f. Resolving these claims through a class settlement is superior to other available methods for a fair and efficient adjudication.

4. Having found that it is will likely approve the Settlement Agreements and certify the Settlement Class, the Court does hereby direct IPPs to give notice of the proposed Settlement Agreements to the Settlement Class.

5. The Court designates Jason Ames, Caleb Batey, Christopher Bessette, Cindy Booze, Matt Bryant, Steve Bugge, William Cabral, Matthew Ence, Drew Fennelly, Sheri Harmon, Christopher Hunt, John Kopp, Linda Lincoln, Patrick McGuiness, Joseph O'Daniel, Tom Pham, Piya Robert Rojanasathit, Bradley Seldin, Donna Shawn, David Tolchin, Bradley Van Patten, the City of Palo Alto, and the City of Richmond as representatives for the Settlement Class for purposes of disseminating notice.

6. The Court designates Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann & Bernstein, LLP as Class Counsel for the Settlement Class.

7. The Court appoints the firm Epiq Class Action & Claims Solutions (“Epiq”) as the Settlement Notice Administrator Settlement Class Counsel and their designees are authorized to expend funds from the escrow accounts to pay notice and administration costs as set forth in the Settlement Agreements.

8. The Court finds that IPPs' proposed notice program fully complies with Federal Rule of Civil Procedure 23 and due process and constitutes the best notice practicable under the circumstances.

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2 9. The Court approves the form of the Email Notice attached hereto as Exhibit A. The
3 Court also approves the form of the Long Form Notice attached hereto as Exhibit
4 B, including the exclusion and inclusion procedures as described therein. The
5 Court finds that taken together, emailing the Email Notice to those email addresses
6 of class members that are available to Settlement Class Counsel, together with
7 publication of the Email Notice, and internet posting of the Long Form Notice are:
8 (i) the best notice practicable; (ii) reasonably calculated to, under the
9 circumstances, apprise members of the settlement class of the proposed settlements
10 and of their right to object or to exclude themselves as provided in the settlement
11 agreements; (iii) reasonable and constitute due, adequate, and sufficient notice to
12 all persons entitled to receive notice; and (iv) meet all applicable requirements of
13 due process and any other applicable requirements under federal or state law.

14 10. IPPs' notice provider shall provide notice of the settlements and the claims process
15 consistent with the procedure outlined in IPPs' Motion to Direct Notice Regarding
16 Settlements.

17 11. IPPs' notice provider shall cause banner ads to be placed on the websites as
18 discussed in the Notice Plan, or substantially similar websites should some
19 circumstance make it impossible to post on the precise websites listed in the Notice
20 Plan.

21 12. IPPs' notice provider shall publish notice in sponsored search listings on major
22 search engines, as described in the Notice Plan.

23 13. IPPs' notice provider shall send informational releases regarding the case as an
24 email "blast" to media outlets nationwide, including newspapers, magazines,
25 national wire services, television, radio and online media, as discussed in the
26 Notice Plan.

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1 14. IPPs' notice provider shall maintain the case-specific website, toll-free telephone
2 number, and postal mailing address to further assist potential settlement class
3 members in understanding their rights under the settlements.

4 15. The Court sets the following schedule for the dissemination of class notice and the
5 scheduling of further litigation events, including but not limited to, the final
6 approval hearing, opt-out and objection deadlines, and deadlines by which a
7 motion for attorneys' fees and litigation expenses shall be submitted:

| Event | Due Date |
|--|---|
| Notice Campaign Begins | February 11, 2020 |
| Last Day to file IPPs' Motion for Attorneys' Fees and Reimbursement of Litigation Expenses | March 9, 2020 |
| Exclusion and Objection Deadline | April 13, 2020 |
| Motion for Final Approval and Response to Objections (if any) | May 5, 2020 |
| Final Approval Hearing | <u>WEDNESDAY,</u> <u>May 20, 2020, 2:00 pm</u> |

16 16. Consistent with the above schedule, each member of the settlement class shall have
17 the right to be excluded from the settlement class by mailing a request for
18 exclusion to the claims administrator to be postmarked no later than April 13,
19 2020. Requests for exclusion must be in writing and set forth the name and address
20 of the person or entity that wishes to be excluded, any trade name or business
21 name and address used by such person or entity, and must be signed by the class
22 member seeking exclusion. No later than May 5, 2020 Settlement Class Counsel
23 shall file with the Court a list of all persons or entities who have timely requested
24 exclusion from the settlement class as provided in the settlement agreements.

25 17. Any member of the settlement class that does not properly and timely request
26 exclusion from the settlement class as provided above shall, upon final approval of
27 the settlements, be bound by the terms and provisions of the settlements so

approved, including, but not limited to, the releases, waivers, and covenants set forth in the settlement agreements, whether or not such person or entity objected to the settlement agreements, and whether or not such person or entity makes a claim upon the settlement funds.

5. 18. Each member of the settlement class that has not timely excluded themselves
6. from the settlement class shall have the right to object to the new Distribution Plan
7. by filing written objections with the Court no later than **April 13, 2020**. Failure
8. to timely file written objections will preclude a class member from
9. objecting to the settlements.

10. 19. Each member of the settlement class as provided above shall have the right to
11. appear at the Fairness Hearing by filing a notice of intention to appear.

12. 20. The Court will conduct a Fairness Hearing on **Wednesday, May 20, 2020**, at
13. 2:00 p.m., at the United States Courthouse, 1301 Clay Street, Courtroom 1, 4th
14. Floor, Oakland, California 94612. The Fairness Hearing will be conducted
15. to determine the following:

16. a. Whether the proposed Distribution Plan and settlements are fair,
17. reasonable, and adequate and should be granted final approval;

18. b. Whether final judgment should be entered dismissing with prejudice the
19. claims of the settlement class against Defendants LG Chem, Hitachi
20. Maxell, and NEC; and

21. c. Such other matters as the Court may deem appropriate.

22. 21. All briefs, memoranda, and papers in support of final approval of the settlement
23. shall be filed no later than **May 5, 2019**.

IT IS SO ORDERED

Dated: January 10, 2020

Yvonne Gonzalez Rogers
YVONNE GONZALEZ ROGERS
United States District Judge